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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

August 18, 1992


Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Ref: In the Matter of Reexamination of  
the Policy Statement on  
Comparative Broadcast Hearings;  
GC Docket No. 92-52

Dear Ms. Searcy:

Transmitted herein is an original and seven copies of the  
informal comments of the United States Catholic Conference.

Sincerely,

  
Katherine G. Grincevich  
Assistant General Counsel

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Reexamination of the  
Policy Statement on  
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Hearings;  
GC Docket No. 92-52

Dear Ms. Searcy:

The United States Catholic Conference ("USCC" or "Conference") submits the following informal comments in the above-captioned Notice of Proposed Rulemaking ("Notice"), released April 10, 1992, by the Federal Communications Commission ("FCC" or "the Commission"). Pursuant to 47 C.F.R. §1.206, these informal comments are labeled "ex parte" and two copies have been filed with your office under separate cover.

We write to add our support to the comments of the Media Access Project, Black Citizens' For a Fair Media, et.al. ("MAP et. al.") that the Commission establish criteria that result in broadcast licensees which will use their stations to reflect the diversity of viewpoints in the community of license.

USCC has long been involved in communication policy matters, particularly those that address the diversity of sources of information and entertainment available to the public. We speak from the perspective of those without economic or political power, those whose voices are not heard over the airwaves. Diversity of viewpoints available to the public is no mere academic theory, but the very essence of the public interest, the standard by which broadcast licensees are to be chosen and to

operate under the Communications Act of 1934. At a time when the United States seems divided by race, sex, religion and national origin, the Commission must ensure that the airwaves, owned by all of the people of this country, are used for the benefit of, and reflect the needs and interests of all. The Conference believes that these needs will best be met by adoption of the counter-proposals offered by MAP et. al. as to a 3-year holding period requirement, no tie-breakers as the FCC has proposed them, and a firm commitment to minority and female preferences.

Fundamental to the process of establishing criteria by which broadcast licenses are chosen is an appreciation of broadcasters' public as well as private nature. That each broadcast licensee is a proxy for all members of its community unable to secure that broadcast license is beyond question. The Supreme Court affirmed this bedrock principal barely two years ago in Metro Broadcasting v. FCC, 110 S.Ct. 2997 (1990) ("Metro"). The Court also affirmed related principles of broadcast regulation, principles it deemed "axiomatic": broadcast regulations must be crafted "in light of the rights of the viewing and listening audience", and "[s]afeguarding the public's right to receive a diversity of views and information over the airwaves is therefore an integral component of the FCC's mission". Metro, 110 S.Ct. at 3010.

The explosion of rage and despair in Los Angeles make plain the deep fissures of racism and poverty cut into American society and its institutions. "Today in our country men, women and children are being denied opportunities for full participation and advancement in our society because of their race.... The structures of our society are subtly racist.... They are geared to the success of the majority and failure of the minority... [R]acism is sometimes apparent in the growing sentiment that too much is being given to racial minorities by way of affirmative action programs or allegations to redress long-standing imbalances in minority representation...." Brothers and Sisters to Us, U.S. Bishop's Pastoral Letter on Racism in Our Day (November 14, 1979). "Every form of discrimination against individuals and groups - whether because of race, ethnicity, religion, gender, economic status, or national or cultural origin - is a serious injustice which has severely weakened our social fabric and deprived our country of the unique contributions of many of our citizens." Id. at 2.

If the public interest is to mean anything in the regulation of broadcasting, it must mean that the First Amendment rights of all members of the community to receive information and viewpoints from and about all segments of their community are protected and promoted through broadcast ownership policies. The

criteria used to choose the licensee of a broadcast station profoundly affects the availability of diverse views over broadcast facilities because, as Congress and the Commission consistently have determined, the nature of the owner controls the nature of the programming. The Commission has eliminated other regulatory assurances used to promote diversity of programming (such as requiring broadcasters to determine and record community needs and interests and to address issues of public importance to their community fairly), reasoning that policies favoring diversity of station ownership will accomplish the same goal. Syracuse Peace Council (Reconsideration), 64 R.R. 2d 1073, 1079 (1988); Fairness Doctrine Alternatives, 63 R.R. 2d 488, 538-9 (1987); Deregulation of Radio, 49 R.R. 2d 1, 24 (1981). Therefore, the comparative criteria proposed by MAP et. al. to choose broadcast licensees taking into consideration applicants with minority and female owners, owners who also act as managers, the applicant's other media holdings, and a commitment to the broadcast facility and its community of license, will develop diversity of views in the broadcast media.

The Conference supports the proposal by MAP et. al. that following the comparative hearing process, the applicant chosen to be a broadcast licensee be required to hold that license for at least 3 years. Likewise, we join MAP, et. al. in rejecting the Commission's proposed point system which inevitably lifts form over substance. Only a case-by-case approach can give proper weight to comparative criteria, such as diversification, integration, and ownership, in light of the circumstances of each community of license. Further, the Conference supports MAP et. al. in its criticism of the Commission's proposed tie-breaking methods.

We agree with MAP et. al. that integration of ownership and management should be retained as a comparative criterion. To reward and encourage owners to manage their broadcast station gives meaning to the Commission's long-standing policies linking the characteristics of owners with a broadcast station's direction.

The Conference supports the proposal that minority and female ownership be established as separate comparative factors, if integration of ownership and management is eliminated as separate criterion. Since the nature of the owner affects the programming and station hiring policies (see Metro, 110 S.Ct. at 3018-21), minority or female ownership will provide new voices for broadcasting. Consideration of minority ownership of a broadcast applicant to promote a wider diversity of viewpoints in broadcasting was upheld by the Supreme Court in Metro as

consistent with the First Amendment values inherent in broadcasting and the Equal Protection Clause. The Court's reasoning in Metro also applies to consideration of female ownership as a comparative factor. Promoting diversity of viewpoints over broadcast facilities is an essential component of the FCC's mission, and the decision by Congress (and the Commission) that consideration of minority and female ownership of a broadcast applicant when making licensing decisions helps promote diversity of views in broadcasting is to be given great weight. Metro at 3016-17. "When we face a complex problem with many hard questions and few easy answers we do well to pay careful attention to how the other branches of Government have addressed the same problem." Columbia Broadcasting System v. Democratic National Committee, 412 U.S. 94, 103 (1973).

Subsequent to Metro, the Commission has further eroded the First Amendment's mandate that broadcasting reflect the widest possible dissemination of information from diverse and antagonistic sources by allowing a single entity to control 30 AM's and 30 FM's at once, and allowing some joint ownership of networks and cable systems. Revision of Radio Rules and Policies, 70 R.R. 2d 903 (1992); Network-Cable Cross-Ownership, MM Dkt. No. 82-434 (June 18, 1992). A step toward restoring regulatory balance is in strengthening, not weakening, its commitment to ownership criteria. Adding minority and female ownership as a comparative factor is essential to prevent a monopoly of established broadcasters voices.

Finally, the proposal to include voluntary public interest program plans as a comparative factor is a valuable mechanism to encourage and reward community-oriented programming. We support their proposal to award comparative credit to an applicant proposing to offer programming made accessible to persons with disabilities, significant amounts of programming for children, and significant amounts of public affairs programming. We further support their proposal that an applicant making such a voluntary commitment to induce the Commission to award the license to that applicant be required to prove in their renewal application that they fulfilled their commitment. This process rewards broadcasters' voluntary superior commitment to public service while respecting the licensee's editorial judgements.

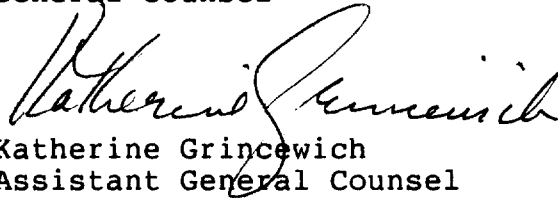
The Conference urges the Commission to establish criteria for comparing broadcast applicants which consider minority and female ownership and promote diversification of the media outlets

without the use of a point system. Once chosen as licensees, broadcasters should be required to hold their stations for a least three years so that the comparative process will not be rendered meaningless by sales of stations to entities not chosen using diversity-oriented criteria.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Mark Chopko/Kgg".

Mark E. Chopko  
General Counsel

A handwritten signature in cursive script, appearing to read "Katherine Grincewich".

Katherine Grincewich  
Assistant General Counsel